



HANDBOOK FOR PLANNING AND ZONING COMMISSIONERS

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WELCOME

Congratulations on your appointment to the Planning and Zoning Commission of the City of Cedar Park, Texas. This handout is intended to provide a quick overview of basic legal considerations facing the Planning and Zoning Commission, as well as explain several key staff roles and resources. If you have any questions concerning legal matters relating to your role or the business affairs of the City, please do not hesitate to contact the Legal Department.

City Charter

The City of Cedar Park is a home-rule municipal corporation and holds the full power of self-government, subject to any restrictions provided by federal and State law. The Cedar Park City Charter was adopted in 1987 and may be amended by the majority vote of the registered voters of the City of Cedar Park. The City Charter is best described as the City's constitution; it has the force of law and directs the City Council and City staff on how the City is to be operated. The current Charter is available via the City's website and this link: <http://z2.franklinlegal.net/franklin/Z2Browser2.html?showset=cedarparkset>.

Cedar Park Code of Ordinances

The Cedar Park Code of Ordinances, along with adopted policies, rules, and resolutions, are the written embodiment of City policy. The Code of Ordinances has the force of law, and its regulations are binding upon every person within the City's corporate limits and extraterritorial jurisdiction. The Code of Ordinances may be amended by Council action after two (2) public readings. The current Code of Ordinances is available via the City's website and this link: <http://z2.franklinlegal.net/franklin/Z2Browser2.html?showset=cedarparkset>.

Mayor

The Mayor presides at all City Council meetings and may vote on all issues. The Mayor is the official spokesperson for the City. The Mayor has no power of veto over the actions of the majority of the City Council. The Mayor's role is like a chairman of a corporate board of directors.

City Council

The City Charter provides for governance under the "Council-Manager" form of government, whereby the Council enacts local laws, adopts budgets, determine policies, and appoints the City Manager, who is then responsible for day-to-day City operations and administration. The City Council, by ordinance or resolution, may pass laws and establish policy for the City. Usually this requires the affirmative vote of four (4) members, however, there are circumstances for which a supermajority is required or in which action may be effected by fewer than four (4) votes.

Planning and Zoning Commission

The Planning and Zoning Commission is established by Cedar Park Home Rule Charter, Article VIII Planning and Zoning, and has powers and duties pursuant to Texas Local Government Code, Chapters 211 and 212, and Cedar Park Code of Ordinances, Chapters 11 and 12. Those powers and duties include authority over subdivisions and zoning.

Authority over Zoning

In accordance with Texas Local Government Code, Chapter 211, and Cedar Park Code of Ordinances, Chapter 11, Zoning, the Planning and Zoning Commission hears and makes recommendations to the City Council on all original and rezoning cases, and on master development plans associated with the Planning Area (PA) zoning district. The Planning and Zoning Commission shall make its recommendation on rezonings and master development plans in accordance with the standards set forth in the Zoning Code. If the Planning and Zoning Commission votes to recommend denial of an original zoning, rezoning, or master development plan, an approval by the City Council then requires an affirmative vote of three-fourths of all members of the City Council.

Authority over Subdivisions

In accordance with the Texas Local Government Code and Cedar Park Code of Ordinances, Chapter 12, Subdivision Regulations, the Planning and Zoning Commission is the municipal authority responsible for approving plat subdivisions. Unlike Commission recommendations on zoning, plats do not go to City Council for approval; the final decision is made by the Planning and Zoning Commission. Additionally, the Planning and Zoning Commission does not have discretion in its plat approval authority. The Texas Local Government Code requires the Planning and Zoning Commission to approve a plat if the plat application meets the requirements set forth by the Texas Local Government Code and the Cedar Park Code of Ordinances. City staff will confirm conformance with those requirements and only include a plat approval on the agenda if it has met those requirements. It is worth noting that even though replats require a public hearing, the Commission still does not retain any discretion in approving replats.

City Employee Relations

Also by the City Charter, the City Council and individual Council members are prohibited from dictating the appointment or removal of a City employee or dealing directly with a City employee who is subject to the direction and supervision of the City Manager. All inquiries of and requests for staff action shall be directed through the Designated Staff Liaison(s) or City Manager (or if relating to legal matters, the City Attorney, as stated below).

Designated Staff Liaison

One or more City staff persons are assigned as the Designated Staff Liaison(s) for each Board and Commission. The designated staff liaison(s) are responsible for: facilitating communications between the Commission and the staff, serving as a resource for information related to and

affecting the Commission, and providing the necessary facts on agenda items to allow the Commission to make well-informed decisions. The Designated Staff Liaisons for the Planning & Zoning Commission are the Development Services Department. Commissioners may direct project-related questions and request for agenda items to the Designated Staff Liaisons.

City Manager

The City Manager is responsible for day-to-day City administration of City operations. Much like the president of a corporation. The City Manager assigns one or more Designated Staff Liaison(s) to each Board and Commission.

City Attorney

The City Attorney represents the City of Cedar Park and is responsible for providing legal advice and representation to the City Council, Boards and Commissions and the City staff in all matters affecting City business, handling of all proceedings in the City's Municipal Court, including the prosecution of Class C Misdemeanor criminal matters, and supervising the City's Legal Department staff and all retained outside legal counsel. The City Attorney does not represent the Council, Boards, Commissions, and staff members in their individual capacities or regarding non-City business.

City Secretary

The City Secretary is responsible for administration of elections, public information (including archiving and retention), and open meetings. Because these areas are highly governed by State law, the City Secretary works under the direct supervision of the City Attorney.

Attorney-Client Privilege

The Legal Department represents the City of Cedar Park via its City Council and Boards & Commissions regarding legal matters within their respective subject areas and authorities. Communications between Board & Commission members and the Legal Department for the purpose of soliciting and providing legal advice are generally privileged and confidential, except where the Legal Department's keeping of information in confidence would result in illegal activity or harm to the City. In the event of a conflict between a Board or Commission and the City, the Legal Department represents the City, would recuse itself from further representation of the Board or Commission on that matter, and would recommend the appointment of independent outside legal counsel for that matter.

Public Information

State law requires that all records of "official City business" kept by or on behalf of Commissioners be public information and must be disclosed to the public when requested. The term "official City business" is construed broadly and pertains to anything undertaken by or relating to any City activity. Therefore, all communications relating to City matters, regardless of the medium and even if on your personal computer, mobile device, or notes, are subject to

public disclosure if they exist at the time a public information request is received. Deletion or destruction of such information after a request is received has serious criminal consequences far more serious than any consequences of disclosure.

Open Meetings

State law requires that all regular, special and emergency meetings of the Planning and Zoning Commission shall be open to the public and all deliberations made by the Planning and Zoning Commission shall be made in an open meeting. The law is strongly construed in favor of transparency, and in most instances, public notice of Planning and Zoning Commission meetings must be posted seventy-two (72) hours in advance, otherwise they are illegal. Whenever a quorum of Commissioners is gathered and City business is discussed, a Planning and Zoning Commission meeting exists, regardless of whether a “meeting” was intended. This means that a meeting can take place merely by a quorum of Commissioners discussing City business over the internet or at a social event. It is against the law to attempt to circumvent the Open Meetings law by discussing City business in piecemeal via several groups each consisting of less than a quorum of Commissioners. This is called a “walking quorum” and is strictly prohibited. There are criminal penalties for violations of the Open Meetings Act and Attorney General has obtained criminal indictments for open meetings violations. All meetings are required to have minutes prepared by the City staff and approved by the City Council.

Executive Session

By State law, discussion of certain matters may be held in a closed executive session. These discussions are generally limited to litigation, real estate transactions, personnel issues, security, economic development negotiations, and issues subject to the City Attorney’s requirements under the State Bar of Texas Disciplinary Rules of Professional Conduct. Such meetings are “closed” in that they are not open to the public and may include only the Commission and necessary staff, consultants, and advisors. The policy underlying this limited authorization recognizes and protects the City’s sensitive legal and financial interests, and Commissioners should therefore refrain from communicating confidential information received in closed executive sessions. Additionally, disclosure of sensitive legal and financial interests received in executive session could implicate Texas Penal Code Section 39.06, summarized herein. There are no minutes for executive sessions, only a certified agenda, which by State law may not be disclosed. By State law, any action of the Commission, including any regarding matters discussed in closed executive session, must take place in a public, open meeting.

Conflicts of Interest

Texas Local Government Code:

- (a) *Chapter 171 Regulation of Conflicts of Interest Of Officers of Municipalities, Counties, and Certain Other Local Governments:* Texas Local Government Code Chapter 171 generally requires Commissioners to subordinate their personal interest to the interest of the City. It further specifically prohibits a Commissioner from discussing or voting upon any matter in which the Commissioner or any immediate

family member, by blood or marriage, has a financial interest or will derive a financial benefit. Before the start of a meeting at which a matter is to be discussed, the Commissioner must file with the City Secretary a signed affidavit declaring this conflict. There are criminal penalties for violation of this statute. If a conflict exists, the Commissioner shall not participate in any of the discussion and shall not vote and, in fact, must leave the meeting room during discussion or voting on the issue. A copy of this affidavit is attached for your reference.

Texas Penal Code:

- (a) *Section 36.02 Bribery:* This Section prohibits a Commissioner from offering or accepting a benefit as consideration for the Commissioner's vote or recommendation or other exercise of discretion as a Commissioner, or any benefit as consideration for a violation of legal duty imposed on a Commissioner. An offense under this Section is a second degree felony.
- (b) *Section 36.03 Coercion of Public Servant or Voter:* This Section prohibits a Commissioner from influencing a public servant to violate the public servant's known legal duty or influences a voter not to vote or to vote in a particular manner. An offense under this Section is a Class A misdemeanor.
- (c) *Section 36.07 Acceptance of an Honorarium:* This Section prohibits a Commissioner from accepting an honorarium for services that the Commissioner would not have been requested to provide but for the Commissioner's official position. For example, receipt of a payment for giving a speech is a prohibited honorarium if the Commissioner would not have been asked to speak but for the Commissioner's official status. An offense under this Section is a Class A misdemeanor.
- (d) *Section 36.08 Gift to Public Servant by Person Subject to His Jurisdiction:* This Section prohibits a Commissioner from soliciting or accepting a benefit from a person subject to regulation, inspection, or investigation by the Commissioner or the City.

This Section also prohibits a Commissioner from receiving a benefit from a person the Commissioner knows is interested in or could be interested in a contract or pecuniary transaction if the Commissioner exercises discretion in connection with a contract or other pecuniary transaction of the City.

An offense under this Section is a Class A misdemeanor.

Exemptions: *Section 36.10 Non-Applicable* includes exemptions to Section 36.08, which include:

- (1) A benefit that is a fee prescribed by law to be received by the Commissioner or any other benefit that the Commissioner is lawfully entitled or for which he gives legitimate consideration in a capacity other than as a Commissioner;

- (2) A gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient;
 - (3) Political contributions;
 - (4) An item with a value of less than \$50, excluding cash or other negotiable instrument;
 - (5) An item used by the City that allows use of the property or facilities owned, leased, operated by the City;
 - (6) Transportation, lodging, and meals in connection with a conference or similar event in which the Commissioner renders services, such as addressing an audience or engaging in a seminar, to the extent that those services are more than merely perfunctory; and
 - (7) Food, lodging, transportation, or entertainment accepted as a guest, and if the Commissioner is required to report those items, reported by the Commissioner in accordance with that law.
- (e) *Section 39.02 Abuse of Official Capacity* – This Section prohibits a Commissioner from intentionally violating a law relating to the Commissioner’s office or misusing City property, services, personnel, or any other thing of value belonging to the City that is in the Commissioner’s possession by virtue of the Commissioner’s office. An offense under this Section is either a Class A, B, or C misdemeanor depending on specifics of the violation.
- *Note that this statute was held unconstitutional by *Ex parte Perry*, 483 S.W.3d 884 (Tex. Crim. App. 2016), but only to the extent that the statute conflicts with the Separation of Powers Clause of the U.S. Constitution.
- (f) *Section 39.06 Misuse of Official Information*: This Section prohibits a Commissioner from using information that the Commissioner has by virtue of the Commissioner’s office and that has not been made public: (1) to acquire or aid in acquiring an interest in any property, transaction, or enterprise that may be affected by the information; or (2) to speculate on the basis of the information. This Section also prohibits a Commissioner from using nonpublic information for a nongovernmental purpose that the Commissioner has access to by means of their office to intentionally obtain a benefit or harm or defraud another. An offense under this Section is a Class C Misdemeanor.

Cedar Park City Charter:

- (a) *Section 11.08 Prohibitions*: This Section prohibits (a) Commissioners from directly or indirectly giving anything of value to anyone in connection with the appointment; and

(b) Commissioners from soliciting any contribution for any political purpose from a City official or City employee.

(b) *Section 11.09 Conflicts of Interest Prohibited:* This Section prohibits: (a) Commissioners from acting in any way which places personal interest in conflict with the City's interest; (b) accepting a gift, favor, privilege, or employment from a person or business entity that does business with the City; having a pecuniary interest in a contract with the city or having an interest in the sale of land, tangibles, or intangibles to the City; and (c) serving as surety for the performance of a person doing business with the City or serving as a surety for a City officer or employee required by the Charter to make a surety bond.

Planning and Zoning Commission Rules and Procedure: Rule 3.7 of the Planning and Zoning Commission Rules and Procedure prohibits Commissioners from meeting with or discussing with any applicant issues subject to the regulation or authority of the Commission except at a properly posted Planning and Zoning Commission meeting.